

# City of Norfolk

Office of the City Manager

cc: Dir., Facility & Enterprise Mgmt.

June 15, 2004

To the Honorable Council  
City of Norfolk, Virginia

Re: Land Sale – Fulco Development, LLC

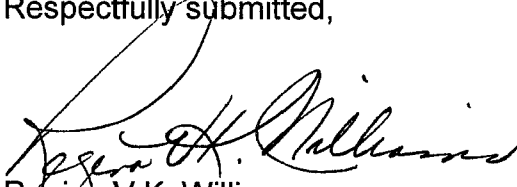
Lady and Gentlemen:

The City of Norfolk owns a tract of land, known as Parcel H, located on River Edge Road. At one time, the site was an old waste treatment plant demolished over 20 years ago.

William Fuller of Fulco Development, LLC wishes to purchase the tract of land from the City to develop six residential lots on the site. The land is approximately 2.907 acres. An independent appraisal places the value of the land at \$225,000.

Recommendation: Schedule public hearing

Respectfully submitted,

  
Regina V.K. Williams  
City Manager



Form and Correctness Approved:

Contents Approved:

By   
Office of the City Attorney

NORFOLK, VIRGINIA

By   
DEPT.**ORDINANCE No.**

AN ORDINANCE AUTHORIZING THE SALE OF THE PROPERTY DESCRIBED AS PARCEL "H," AS SHOWN ON THE PLAT ENTITLED "SUBDIVISION OF POPLAR HALLS, SECTION FIVE, KEMPSVILLE MAGISTERIAL DISTRICT, PRINCESS ANNE COUNTY, VA.," TO FULCO DEVELOPMENT, L.L.C. FOR THE SUM OF \$225,000.00, AND APPROVING THE PURCHASE AND SALE AGREEMENT.

WHEREAS, the City of Norfolk owns certain property located in the City of Norfolk, described in Exhibit A attached to and made a part hereof (Property); and

WHEREAS, Fulco Development, L.L.C. has offered to purchase the said Property from the City of Norfolk for the sum of \$225,000.00; and

WHEREAS, Section 2(5) of the Norfolk City Charter grants the City the power to sell any of its property, whether located within or without the City; and

WHEREAS, it is the judgment of the Council that the Property is not needed by the City for any of its municipal purposes and should therefore be sold to Fulco Development, L.L.C.; now, therefore,

BE IT ORDAINED by the Council of the City of  
Norfolk:

Section 1:- That the sale to Fulco Development, L.L.C. of that certain property, owned by the City of Norfolk described in Exhibit A attached hereto, for the sum of \$225,000.00, is hereby authorized, and the Purchase and Sale Agreement, a copy of which is attached as Exhibit B, is hereby approved.

Section 2:- That upon receipt of the sum of \$225,000.00 from Fulco Development, L.L.C., the City Manager is authorized to deliver a deed, with Special Warranty of Title, in form satisfactory to the City Attorney, to Fulco Development, L.L.C. or whomever they shall designate, conveying the said property, and the City Manager is further authorized to do all things necessary and proper to effect the conveyance of the property and to carry out the terms of the Purchase and Sale Agreement.

Section 3:- That the City Manager, with the advice and counsel of the City Attorney, may correct, revise or amend the Purchase and Sale Agreement as she may deem appropriate in order to carry out the intentions of the Council.

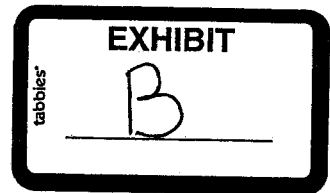
Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

## Exhibit A

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being bounded on the southeast by the northwest terminus of River Edge Road and on the northwest and north by the waters of Broad Creek, said parcel being further described as follows: Parcel "H," as shown on a plat entitled, "Subdivision of Poplar Halls, Section Five, Kempsville Magisterial District, Princess Anne County, VA.," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 43 at Page 4.

The above-described parcel contains 2.907 acres of land, more or less.

## PURCHASE AND SALE AGREEMENT



THIS PURCHASE AND SALE AGREEMENT ("Agreement") dated \_\_\_\_\_, 2004, by and between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia (Seller) and FULCO DEVELOPMENT, L.L.C., (Purchaser)

WHEREAS, Seller owns certain real property located on River Edge Road in the City of Norfolk, Virginia, and known as Parcel H on City of Norfolk Tax Map No. 1301; and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the said real property; now, therefore,

### WITNESSETH:

For and in consideration of the mutual covenants contained herein, Seller agrees to sell and Purchaser agrees to purchase, upon and subject to the terms and conditions contained herein, all that certain parcel of land, with all improvements thereon and easements and appurtenances thereunto belonging, as described in Exhibit A hereto attached and incorporated by reference.

#### I. Purchase Price

1. The purchase price for the Property shall be the sum of Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00).
2. Purchaser shall pay Seller the sum of Ten Thousand Dollars (\$10,000.00) upon execution of this Agreement as a Deposit, and shall be applied toward the Purchase Price.
3. The balance of the purchase price shall be due at closing, payable in the form of a certified check, cashier's check or by wired funds.

#### II. Conveyance

1. The Property, and any improvements thereon, shall be conveyed "AS IS" at closing and the conveyance of the Property shall be by Special Warranty Deed free and clear of all liens, but subject to all encumbrances, easements, matters of survey and restrictions of record. As a condition of Purchaser's obligations, title to the Property shall also be insurable in form satisfactory to Purchaser by a nationally recognized title insurance company selected by Purchaser (with no exception for unfilled mechanics' and materialmen's liens) at its standard premium rates, a copy of which Purchaser shall provide to Seller. Seller shall be entitled to rely on the accuracy of the title report issued to Purchaser as to the Seller's interest in the subject property, and the Seller's warranty of title shall be subject to the accuracy of that report. This provision shall survive closing and shall not be merged into any deed of conveyance.

### III. Closing

#### 1. Time and Place

Closing shall be held at the offices of the Seller's Attorney within one hundred twenty (120) days of the effective date (Effective Date) shown on the ordinance adopted by the Norfolk City Council, approving the sale, or such other time the parties hereto may agree and all the legal documents can be prepared and any title problems can be resolved, subject to and in accordance with the provisions of this Agreement.

#### 2. Conditions

(a) This Agreement is subject to acceptance by ordinance adopted by the Council of the City of Norfolk; Seller shall not be bound by the terms of this Agreement until the Effective Date of said ordinance. Seller shall provide Purchaser a copy of said ordinance. In the event that the City Council fails to adopt the ordinance approving this Agreement, Seller shall return the Deposit in full to Purchaser, without further obligation on any of the parties.

(b) At Closing the Purchase Price as adjusted shall be delivered to Seller and possession of the Property will be delivered to Purchaser. The obligations of Purchaser and Seller under this Agreement are conditioned upon all covenants, warranties, representations and agreements contained in this Agreement, which shall remain true and correct in all material respects and shall survive the Closing.

(c) Should Closing not occur within one hundred twenty (120) days of the Effective Date due to no fault of Seller, this contract will become void, and Seller will retain the Ten Thousand Dollars (\$10,000.00) Deposit.

(d) Should Closing not occur within one hundred twenty (120) days of the Effective Date for reasons other than Purchaser's default, the deposit of Ten Thousand Dollars (\$10,000.00) shall be promptly returned to Purchaser.

(e) Title Matters. Purchaser shall have obtained a commitment (the "Title Commitment") for issuance of an ALTA Owner's Policy of Title Insurance (the "Title Policy"), on which Seller shall be entitled to rely as to Seller's interest in the subject property. In the event that the Title Commitment discloses defects of title or other matters unsatisfactory to Purchaser, Purchaser shall notify Seller in writing (an "Objection Notice"), within 45 days of the Effective Date, of such title defects or other matters to which Purchaser objects. Seller covenants that it shall cure all monetary encumbrances and all title objections which may be cured by execution of a document requiring the signature of no party other than Seller (including any affidavits which may reasonably be required by the title insurer). Seller may notify Purchaser in writing (an "Objection Response"), within ten (10) business days after receiving an Objection Notice if it believes that the Objection Notice makes reference to any title defect or other matter that Seller cannot or elects not to cure. Upon receipt of an Objection Response from Seller, Purchaser shall have the option either to (i) terminate this Agreement by notice to Seller given within ten (10) business days of the Objection Response and the Deposit shall be promptly

return to Purchaser or (ii) accept the defects, exceptions or other matters referenced in such Objection Response and proceed to Closing hereunder with no reduction of the Purchase Price. Seller shall have the period until the Closing date within which to correct all defects, exceptions or other matters that it is required or elects to cure.

(f) If as a result of the inspections conducted pursuant to Section VI, Purchaser determines that the Property is not suitable for Purchaser's intended purpose to build a residential development that conforms with the current zoning on the parcel, Purchaser may terminate this Agreement, after showing just cause, by written notice to Seller within ninety (90) days of the Effective Date and shall thereupon be entitled to a return of the Deposit and the parties shall thereafter be relieved of liability to each other, except as set forth herein.

### 3. Prorations and Closing Costs

Seller shall pay all costs associated with any fees to the extent attributable to a period prior to Closing. All real estate taxes and assessments, both general and special, rents, utility charges, and all other normally proratable items shall be prorated to the Closing Date. Should any such proration be inaccurate based on the actual tax bill or assessment when received, either party shall be entitled to a payment from the other to correct the malapportionment. These provisions shall survive Closing. Purchaser shall pay all recordation taxes and fees to record the Deed. Purchaser shall pay all costs of title insurance, survey, due diligence reports and similar inspections. Each party hereto shall pay its own attorneys' fees. Purchaser shall be responsible for the payment of all real estate taxes and assessments attributable to the Property coming due subsequent to the date of Closing.

### 4. Items to be delivered by Seller

At Closing Seller shall assign and/or deliver to Purchaser:

- (a) The deed provided for in Section II hereof;
- (b) Evidence of Seller's authority to effect the transaction contemplated by this Agreement;
- (c) A non-foreign status affidavit and other usual and customary documents required of a Seller of real estate;
- (d) Form 1099S real estate reporting information;
- (e) A customary owner's affidavit to the title insurance company to issue its policy free of exceptions for rights of parties in possession, and unfilled mechanics' and materialmen's liens;
- (f) All other rights, contracts, leases, easements and rights-of-way relating to the Property.



#### IV. Sellers Representations and Warranties

Seller's representations and warranties shall be true and correct (with respect to representations) and unbreached (with respect to warranties) in all material respects as of the date of Closing. In the event any of the conditions in this Agreement are unsatisfied at the time specified for Closing, and are not waived in writing by Purchaser, Purchaser may, at its election, terminate its obligations under this Agreement, whereupon this Agreement shall become null and void, no party having any further right or obligation hereunder.

Seller hereby makes the following warranties, representations and covenants with respect to the Property:

1.     Litigation

There is no claim, action, suit, investigation or proceeding, at law, in equity or otherwise, now pending or, to the best of Seller's knowledge, threatened against the Seller, or with respect to the Property, to which Purchaser might become a party. Seller is not subject to the terms of any decree, judgment or other action of any court, administrative agency or arbitrator, which has or could result in a material adverse effect on the Property or the operation and leasing thereof or Seller's obligations hereunder.

2.     Governmental Requirements

Seller has not received any notice of violation of any federal, state, local, or other governmental order or requirement issued by any governmental body or by any action in any court, against or affecting the Property that has not been fully complied with in all respects to the satisfaction of the governmental authority having jurisdiction.

3.     Assessments

To Seller's knowledge, there are no special assessments unpaid for the Property.

4.     No Conflict

Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the Property to Purchaser, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Seller is bound.

5.     Condemnation

Seller has no notice or knowledge of any pending or threatened condemnation or eminent domain proceedings that would affect the property.

6. Seller's Authority

Seller has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

7. Brokerage or Agent's Fees

Seller will have no obligation whatsoever to pay any brokerage fee or agent's fees and Purchaser agrees to indemnify City against any claim which may be made for such brokerage fee.

8. Environmental Matters

To the best of Seller's knowledge (i) there are no "hazardous substances" (as defined in Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq., as amended) at the Property; (ii) there has been no release or threat of release of any such hazardous substance; (iii) the Property is not subject to regulation by any governmental entity as a result of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks, (C) an accumulation of rubbish, debris or other solid waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any "hazardous waste" (as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., as amended), or "toxic substance" (as defined in the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq., as amended), including without limitation asbestos and items or equipment containing polychlorinated biphenyls (PCBs) in excess of 50 parts per million; (iv) no environmental condition exists on the Property that either (A) requires the owner of the Property to report such condition to any authority or agency of the State of Virginia or (B) requires the owner of the Property to make a notation of such condition in any public records or conveyancing instrument upon the conveyance of the Property; and (v) Seller has not received any written notice that any condition exists on the Property that is characterized by any governmental authority as an actual or potential danger to the environment or public health.

9. Zoning

Seller and Purchaser understand that property is zoned R-6 (One-Family District). Should Purchaser desire to sub-divide Property for single-family homes then the development must be reviewed and approved by the City of Norfolk's Design Review Committee as set forth in the Code of the City of Norfolk 1979, as amended.

10. Access

The property has adequate legal access to a public road.

## V. Purchaser's Warranties

Purchaser hereby makes the following warranties and representations with respect to the purchase of the Property:

### 1. No Conflict

Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the Property to Purchaser, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Purchaser is bound.

### 2. Purchaser's Authority

Purchaser has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

### 3. Site Plan Review

The site plans will be submitted to the Department of Planning and Community Development for approval before construction commences. The first improvements constructed on the property will be subject to review and approval by the City of Norfolk's Design Review Committee as set forth in the Code of the City of Norfolk, 1979, as amended. The deed conveying the property to Purchaser shall contain a covenant that the Purchaser, and its successors and assigns, shall comply with said Code provisions as to the first improvements placed on the property.

## VI. Inspections

Purchaser and its designees shall have the right, at their own peril and risk, and without the Seller incurring any liability, to enter upon the Property for the purpose of surveying, making such soil boring or other tests, conducting engineering or environmental studies, collecting architectural data and generally making such other physical inspections as are deemed necessary to determine its suitability for the construction of a single-family dwelling. Seller shall provide its full cooperation in this regard. Purchaser shall indemnify and hold Seller harmless from and against any claim for personal injury or property damage resulting from Purchaser's entry upon the Property.

## VII. Notices

All notices called for hereunder shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested to:

Seller:

Department of Facility and Enterprise Management  
City of Norfolk  
City Hall – 3<sup>rd</sup> Floor  
810 Union Street  
Norfolk Virginia 23510  
Attn: Real Estate Bureau

with a copy to:

Bernard A. Pishko, Esq.  
City Attorney  
Suite 900  
810 Union Street  
Norfolk, Virginia 23510

Purchaser:

Fulco Development, L.L.C.  
500 E. Main Street  
Suite 820  
Norfolk, Virginia 23510

or to such other address as the party to receive such notice may hereafter request by written notice to the other.

VIII. Miscellaneous

1. Risk of Loss

In the event of a fire or other casualty to the Property or any portion thereof, Purchaser shall not have the right to terminate this Agreement unless a casualty is of such a nature to make the Property no longer functional or usable to the Purchaser. Any such termination notice shall be given within ten (10) days after Purchaser receives written notice of the casualty. If Purchaser does not terminate this Agreement pursuant to the preceding sentence, the parties shall proceed to Closing on all of the terms and conditions of this Agreement, with no change or reduction in the Purchase Price.

2. Taking

Until Closing, all risk of loss, damage or taking by way of eminent domain shall be borne by the Seller. In the event of a taking of the property prior to Closing by the exercise of the right of eminent domain, Purchaser shall have the option to:

(a) terminate this Agreement, in which case, Seller will return the Deposit to Purchaser;

(b) proceed to Closing on the remainder of the Property, if it is a partial taking, with a reduction of the Purchase Price to reflect the portion of the property subject to the taking.

3. Survival of Warranties

The covenants and warranties herein shall survive the Closing.

4. Entire Agreement

This Agreement constitutes the entire agreement between the parties and may not be modified or changed except by written instrument executed by both parties.

5. Gender; Number

All pronouns shall be construed to be of such gender and number as the context may require.

6. Headings

All headings are for convenience of reference only and do not constitute a part of this Agreement nor do they affect its meaning.

7. Governing Law

This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

8. Additional Documentation

Each party shall, upon request from the other from time to time, take such acts and provide such additional documentation as shall be reasonably requested and reasonably necessary or desirable in order to effect the provisions of this Agreement. This obligation shall survive Closing.

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WITNESS the following duly authorized signatures:

**SELLER:**

CITY OF NORFOLK

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**PURCHASER:**

FULCO DEVELOPMENT, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Director, Facility & Enterprise Management

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Deputy/Assistant City Attorney

## Exhibit A

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being bounded on the southeast by the northwest terminus of River Edge Road and on the northwest and north by the waters of Broad Creek, said parcel being further described as follows: Parcel "H," as shown on a plat entitled, "Subdivision of Poplar Halls, Section Five, Kempsville Magisterial District, Princess Anne County, VA.," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 43 at Page 4.

The above-described parcel contains 2.907 acres of land, more or less.